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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

OWEN H. BROOKS, *et al.*,
Appellants,

v.

WILLIAM F. WINTER, Governor, *et al.*,
Appellees.

On Appeal from the United States District Court for the Northern District of Mississippi

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SUPPLEMENTAL BRIEF FOR APPELLANTS

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Appellants, Owen H. Brooks, et al., pursuant to Sup. Ct. Rule 16.6 file herewith their supplemental brief calling attention to intervening facts not available at the time of the filing of our last brief.

THE DEFEAT OF BLACK CANDIDATE ROBERT G. CLARK IN THE NOVEMBER GENERAL ELECTION SUBSTANTIATES APPELLANTS' CONTENTIONS THAT THE DISTRICT COURT-ORDERED PLAN IS INADEQUATE AS A REMEDY FOR RACIAL GERRYMANDERING OF CONGRESSIONAL DISTRICTS AND DEPRIVES BLACK DELTA VOTERS OF AN EQUAL OPPORTUNITY TO ELECT CANDIDATES OF THEIR CHOICE.

In Mississippi's November 2 general election black candidate Robert G. Clark, who won the August Democratic primary in the District Court-ordered Second Congressional District, was defeated by white Republican nominee Webb Franklin, a former state court judge, in a

three-way race for the U.S. House of Representatives.[1] The third candidate also was white. Clark's defeat makes it crystal clear that the District Court's congressional redistricting plan which is the subject of this appeal is totally inadequate to remedy the Attorney General's Section 5 objection to the Mississippi Legislature's "least change" plan (J.S., App. B, pp. 25a-29a), fails to remedy 16 years of racial gerrymandering of congressional district lines in Mississippi (J.S., pp. 16-23), and fails to provide black voters in the Delta area with an equal opportunity to elect candidates of their choice.

The state official defendants, in arguing that the questions presented in this appeal are unsubstantial, have relied heavily on Clark's August primary victory to show that Mississippi's "impact theory" (that two congressional districts should be 40% or more black), adopted by the District Court, "provides an opportunity to elect a black Congressman from District 2 without sacrificing the political effectiveness of blacks in District 4" (Motion to Dismiss or Affirm, p. 6). Clark's defeat shows that this "impact theory" is nothing more than a subterfuge for continued racial gerrymandering and fails to provide the relief to which Mississippi's black voters are entitled in this case.

Press reports show that the District Court's creation of a razor-thin 53.77% black population majority in the Second District (but white voting age population and registered voter majorities) merely highlighted the racial element in the campaign and virtually guaranteed that no black candidate, or other candidate supported by the black voting majority, would get elected. The Second Dis-

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[1] The complete, but unofficial returns as reported in the Jackson press are as follows:

Webb Franklin	73,588 (50.2%)
Robert G. Clark	71,335 (48.7%)
William V. Harris	1,601 (1.1%)

(Jackson) *Clarion-Ledger*, November 4, 1982, p. 1B.

trict contest was "really a race about race." [2] Franklin's campaign consisted of an unabashed appeal to the white voting majority on the basis of race. A tag line on one of Franklin's television commercials proclaimed: "Elect Webb Franklin to Congress. He's one of us." [3] In another television commercial which opened and closed with a view of the Confererate monument in Greenwood, Franklin said:

> You know, there's something about Mississippi that outsiders will never, ever understand. The way we feel about our family and God, and the traditions that we have. There is a new Mississippi, a Mississippi of new jobs and new opportunity for all our citizens. We welcome the new, but we must never, ever forget what has gone before. We cannot forget a heritage that has been sacred through our generations.[4]

This ad was attacked by the state's Democratic leadership as an effort "to inflame racial passion." [5] The white winner also took the unusual step of putting Clark's picture in his fliers and newspaper supplements. One leading campaign adviser told a *New York Times* reporter that "the pictures were being used to remind voters that Mr. Clark was black." [6]

Clark lost despite the fact that Gov. William Winter and virtually the entire state Democratic Party leadership endorsed his candidacy and actively campaigned for him. Clark also won endorsements from the state AFL-

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[2] "Mississippi Race, Whatever They Say, Is About Race," *New York Times*, October 14, 1982, p. B12.

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.* Franklin's racial appeals to white voters also are discussed in "2d Congressional District: Robert Clark/Webb Franklin," *Clarion-Ledger-Jackson Daily News*, October 17, 1982, p. 1I; "It was inevitable that race issue would sneak into 2nd District," *Clarion-Ledger-Jackson Daily News*, October 17, 1982, p. 3I.

CIO and was backed by state teachers organizations (Clark is chairman of the state House of Representatives Education Committee). He also campaigned heavily for white votes.[7]

The voting results further prove beyond doubt the stipulation entered in evidence (J.S., pp. 7-8; quoted in Brief Opposing Motion to Dismiss or Affirm, p. 8) that strict racial bloc voting continues to prevail in Mississippi elections. The election results—50.2% for Franklin, 48.7% for Clark—closely approximate the white and black voting age population percentages for the court-ordered Second District (J.S., p. 6 n.4). The precinct voting patterns show that white Democrats carried the Delta counties for Senator John Stennis, the white Democratic senatorial candidate, but crossed over to vote for Franklin against Clark.[8] Senator Stennis received 84,475 votes in the Second District against Republican nominee Haley Barbour, showing that Democratic voters still predominate. However, 13,140 Democratic voters switched to Franklin, the Republican nominee, in the congressional race,[9] showing that race is still more important than party loyalty in Mississippi voting. White

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[7] The *Jackson Daily News* reported (November 2, 1982, p. 10A):

> And, like his opponent—the 40-year-old Franklin—Clark has geared his campaign strategy toward getting out the white vote.
>
> In Clark's television ads, white state Rep. H.L. "Sonny" Meredith of Greenville and Sen. Robert Crook of Ruleville talk of Clark's outstanding record in the Legislature. In another ad, the 54-year-old Clark discusses his farm policy with four white Delta farmers in front of a tractor.
>
> In addition to endorsements of party leaders, like Gov. William Winter, Clark appears to have won the blessings of some white Delta farmers. Last week about 40 farmers came to a Clark reception given by Hiram Eastland, cousin of former Sen. James O. Eastland, in Doddsville.

[8] (Jackson) *Clarion-Ledger*, November 3, 1982, p. 1A.

[9] (Jackson) *Clarion-Ledger*, November 4, 1982, p. 8B.

voters interviewed by the Jackson *Clarion-Ledger* were candid about the basis for their votes:

> Barry McCrew, a 23-year old white catfish farmer from Yazoo City, said he voted for Webb Franklin "because I don't want a black man in Congress. I don't know many whites that are going to vote for him [Clark]."
>
> Mrs. Herbert Bond, a white 41-year-old Yazoo City housewife, said the choice in the 2nd District was simple.
>
> "Franklin was my choice, she said. "I just don't want to see a black man in that position." [10]

In its post-election analysis, the *Clarion-Ledger* acknowledged in an editorial: "Yes, race was a factor—maybe THE factor." [11]

Clark, a four-term state legislator, was the overwhelming choice of the black voters. Clark carried all the majority black Delta counties, except three,[12] but lost heavily in predominantly white precincts and in the six predominantly white, east-central Hill counties (See J.S., p. 25 n.13).[13]

Given the high degree of racial bloc voting prevalent in Mississippi—to which the state has stipulated—the addition by the District Court of the six heavily white counties from the east-central Hills area—Attala, Carroll, Choctaw, Leake, Montgomery, and Webster—to the majority black Delta counties in the Second District

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[10] (Jackson) *Clarion-Ledger*, November 3, 1982, p. 6B.

[11] (Jackson) *Clarion-Ledger*, November 4, 1982, p. 18A.

[12] *Jackson Daily News*, November 3, 1982, p. 2B. Some press reports stated that a low black turnout was a factor in Clark's defeat because he lost Leflore and Sunflower counties, two majority black Delta counties. However, these counties do not have black countywide voting majorities, as indicated by the total absence of black officials elected on a countywide basis. Black turnout was, in fact, the highest in any mid-term Mississippi congressional election.

[13] *Id.*

spelled the defeat of Clark and any other candidate favored by the black voters. Without these six counties, Clark would have won with over 51% of the vote.[14] These voting results prove our contentions on appeal, not only that the District Court erred in deferring to the state's racial policy of establishing two 40% black or better districts, but also that the District Court violated the mandate of *Connor* v. *Finch*, 431 U.S. 407, 424-25 (1977), by stacking the Second District against the black Delta majority by including these heavily white Hill counties (J.S., pp. 23-27).

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[14] The election returns as compiled from reports in the Jackson press (*Jackson Daily News*, November 3, 1982, p. 2B) show as follows (votes for the third candidate, William V. Harris, were excluded from the press report):

Delta Counties	Clark	Franklin
Bolivar	7,055	5,964
Coahoma	4,909	4,605
Holmes	5,320	2,395
Humphreys	2,484	2,108
Issaquena	464	324
Leflore	5,637	6,721
Madison	6,867	5,349
Quitman	1,808	1,361
Sharkey	1,437	1,018
Sunflower	3,941	4,091
Tallahatchie	273	235
Tunica	1,273	1,064
Warren	5,596	8,053
Washington	8,380	8,224
Yazoo	4,457	4,948
	59,901	56,460
Hill Counties		
Attala	3,034	3,892
Carroll	1,536	2,280
Choctaw	1,104	1,992
Leake	2,526	3,246
Montgomery	2,027	3,006
Webster	1,207	2,712
	11,434	17,128

Clark's defeat provides an additional reason why this Court should intervene to protect the voting rights of black Mississippi voters from dilution based upon deference to the discriminatory redistricting policies of the State of Mississippi. This case presents a key test of the scope of the remedial powers of District Courts to remedy discriminatory state policies found by the Attorney General to be objectionable under the Voting Rights Act. The District Court's unwarranted deference to those discriminatory state policies should be reversed.

CONCLUSION

For the foregoing reasons, this Court should note probable jurisdiction, and paragraph 3 of the District Court's judgment ordering into effect the Simpson Plan as a court-ordered plan should be reversed.

Respectfully submitted,

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